



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13101544

[REDACTED],
Complainant,

v.

BELTERRA CASINO,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On October 18, 2013, Yufen He (“Complainant”) filed a Complaint with the Commission against Belterra Casino (“Respondent”) alleging discrimination on the basis of national origin and disability in violation of [REDACTED]

[REDACTED] the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*)

[REDACTED] Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

There are two issues pending before the Commission. The first issue is whether Respondent unreasonably denied Complainant’s request for a reasonable accommodation. In order to prevail, Complainant must prove that (1) she has a disability as the term is defined under the applicable statutes; (2) Respondent was aware of Complainant’s disability; (3) Complainant requested a reasonable accommodation; (4) an accommodation exists that would allow Complainant to enjoy equal benefits and privileges of employment; and (5) Respondent denied the request for a reasonable accommodation.

It is important to note that this finding is based solely upon the Complainant’s rendition of events as the Respondent has refused to participate in the Commission’s investigation. While Respondent was given numerous opportunities to provide evidence in this case, it has refused to do so.

By way of background, Respondent hired Complainant as a Guest Room Attendant on or about November 1, 2010. During the course of her employment, Complainant suffered a back injury



on or about April 16, 2012 and was placed on work restrictions prohibiting her from lifting more than ten pounds. While the restriction prevented Complainant from working as a Guest Room Attendant, she was able to work in the laundry room until late March 2013 when she began experiencing severe back pain and requested to be transferred to another job. On or about April 26, 2013, Complainant met with Respondent to discuss being transferred and was told to meet with Human Resources to find another job within thirty days or be terminated. Ultimately, Complainant was terminated on or about May 30, 2013.

Based upon the facts taken in the light most favorable to the Complainant, she suffers from a disability as the term is defined under the law. Moreover, Complainant requested a reasonable accommodation when she asked to be transferred to another position that could accommodate her medical restrictions. However, there is no evidence that Respondent participated in the interactive process with Complainant in an attempt to find a reasonable accommodation sufficient to allow Complainant to maintain her employment. As such, there is probable cause to believe that a violation of the laws occurred as alleged.

The second issue before the Commission is whether Complainant was terminated because of her disability and national origin. In order to prevail, Complainant must show that (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations and; (4) similarly-situated employees of another national origin or those without impairment were employees were treated more favorably.

Complainant alleges that Respondent's rationale for termination was pretext to discriminate against her on the basis of disability and national origin. It is evident that Complainant is a member of a protected class by virtue of her national origin, Chinese, and disability. Moreover, it is apparent that she suffered an adverse employment action when she was terminated from her employment on or about May 30, 2013. Although Respondent alleges Complainant was terminated for failure to perform job duties, Respondent has refused to provide evidence to support these claims. Rather, Complainant contends she was meeting her employer's legitimate business expectations and that any shortcomings in her performance were due to her employer's failure to grant her request for a reasonable accommodation. Complainant further alleges that Respondent treated similarly-situated non-Chinese employees or those without impairment more favorably under similar circumstances. Thus, again, because Respondent refused to respond to the Commission's repeated requests for information, it has failed to refute Complainant's allegations; further, it has failed to provide a legitimate non-discriminatory reason for Complainant's termination. As such, and based upon the aforementioned, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged

discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

March 26, 2014

Date

Akia A. Haynes, Esq.

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission